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## THE LEGAL FRAMEWORK FOR AMERICAN DIRECT INVESTMENT IN EASTERN EUROPE: ROMANIA, HUNGARY, AND YUGOSLAVIA

In April 1973 Control Data Corporation announced it had entered into a joint venture agreement<sup>1</sup> to manufacture its products in Romania,<sup>2</sup> thereby becoming the first American business to engage in joint venture production in that country. Two years earlier, such an arrangement would not have been possible. Prior to 1971, Romanian law conformed to the orthodox socialist doctrine which vests ownership of the means of production in the state, a position which does not, strictly speaking, permit foreign equity participation in economic organizations. In the interim, however, several developments had occurred in Romanian law favorable to Western investors.

The Control Data announcement represents the second recent<sup>3</sup> instance of an Eastern European nation<sup>4</sup> disregarding socialist doctrine and suc-

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1. For purposes of this Note, a "joint venture" means an overseas operation in which, by virtue of its investment of money and/or capital goods and technology, a foreign investor has something akin to an equity interest, *i.e.*, it has an element of control over the venture and shares the risks and rewards. It is to be distinguished from other, more limited cooperative forms of investment such as the extension of long-term credits, franchising, licensing, coproduction schemes, and the sale of turnkey factories.

For discussions of these various forms of investment agreements, see R. KRETSCHMAR & R. FOOR, *THE POTENTIAL FOR JOINT VENTURES IN EASTERN EUROPE* 3-13, 71-72 (1972) [hereinafter cited as KRETSCHMAR & FOOR]; Note, *American Private Direct Investment in Eastern Europe: Intersection of Business Interests and Foreign Policy*, 21 STAN. L. REV. 877, 888-97 (1969) [hereinafter cited as *American Direct Investment*]. For an interesting discussion of how the essential benefits of joint venture participation might be obtained through one of the other forms, see Benoit, *The Joint Venture Route to East-West Investment*, AM. REV. EAST-WEST TRADE, June 1968, at 39, 40-42.

2. The venture will manufacture peripheral computer components. For details of the agreement concluded with the Romanian Ministry of Machine Tools and Electro Techniques, see Morse & Goekjian, *Joint Investment Opportunities with the Socialist Republic of Romania*, 29 BUS. LAW. 133, 144-46 (1973).

3. The phenomenon of foreign businesses investing capital in the economies of socialist states is not entirely without precedent. During the years of the Soviet Union's New Economic Policy (NEP), 1921-1928, substantial amounts of foreign capital were injected into the war-ravaged Soviet economy. For discussions of the NEP, see M. DOBB, *SOVIET ECONOMIC DEVELOPMENTS SINCE 1917*, at 125-207 (rev. ed. 1966); A. MAZOUR, *SOVIET ECONOMIC DEVELOPMENT: OPERATION OUTSTRIP, 1921-1965*, at 21-33 (1967).

4. For the purposes of this Note, Eastern Europe consists of Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, and Yugoslavia. It should be observed, however, that Yugoslavia is often excluded from this group by the United States government because of its long-standing independence from the Soviet

cessfully attracting direct investment from the capitalist world; Yugoslavia's foreign investment law underwent similar changes as early as 1967 and has since attracted substantial foreign investment.<sup>5</sup> Moreover, in late 1972, Hungary amended its laws to permit foreign equity participation in joint ventures, though to date none has been forthcoming, and it appears several other Eastern European countries may also do so.<sup>6</sup>

Because legal developments in Romania and Hungary generally followed the earlier changes in Yugoslav law and were generated with similar considerations in mind, this Note proposes to compare the three investment laws and assess their relative appeal to foreign investors. The basic premise underlying this analysis is that future investment choices by American businesses among competing Eastern European markets will turn upon advantages one country offers over its competitors by virtue of a more favorable investment law. Because American investors must also observe domestic law affecting overseas operations, some attention will be paid to the degree to which American laws treat commercial relations with Yugoslavia, Romania, and Hungary differently.

A legally oriented approach must inevitably ignore the multitude of economic factors bearing upon investment choices. Nevertheless, it is helpful at the outset to examine the general background of the legal frameworks for foreign investment existing in Yugoslavia, Romania, and Hungary in order to gain an understanding of the interaction of economic forces which led to them.

## I

### FORCES PUSHING TOWARDS A NEW INVESTMENT TECHNIQUE

As Cold War tensions began to subside in the mid-1960's and the period of East-West détente set in, American businesses became aware of the vast potential which the markets of Eastern Europe held for American goods

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Union's influence within the region. For an example of this treatment of Yugoslavia, see notes 76-90 *infra* and accompanying text.

5. See note 23 *infra*.

6. Poland also appears willing to enter into joint ventures with the West, but wishes to do so on an ad hoc basis rather than establish a legal framework that would regularize such transactions. Webster & Stowell, *Foreword* to KRETSCHMAR & FOOR, *supra* note 1, at x. Czechoslovakia, which currently allows no joint ventures, is also considering changes in its laws that would be favorable to such foreign investment. Letter from F. Rousek, Third Secretary of the Czechoslovakian Embassy to the United States, to author, Sept. 13, 1973, on file at the offices of the *Cornell International Law Journal*.

and began to develop closer commercial contacts.<sup>7</sup> This interest was initially manifested in increased trade with Eastern Europe.<sup>8</sup> For several reasons, however, including cumbersome domestic restrictions on exports to Eastern Europe<sup>9</sup> and unsatisfactory terms of trade necessitated by Eastern Europe's lack of hard currency reserves,<sup>10</sup> American firms began to seek more profitable ways of reaching those markets.<sup>11</sup>

American firms could in part avoid the handicap of domestic export restrictions by trading with Eastern Europe through overseas subsidiaries, a fact which encouraged the proliferation of American-organized multinational businesses in the late 1960's.<sup>12</sup> They also began to engage in more sophisticated contractual arrangements in Eastern Europe including, most prominently, patent licensing and the sale of turnkey plants.<sup>13</sup> Both

7. It has been suggested that, barring any substantial political disturbances in Eastern Europe, the market for goods there will reach the size of the current American market by approximately 1980. Benoit, *supra* note 1, at 39. It has also been suggested that the potential for growth inherent in the Eastern European markets, both in terms of trade and investment, surpasses that existing in the Soviet Union, to which considerably more attention is now being paid. *American Direct Investment*, *supra* note 1, at 883, n.25.

8. An indication of the dimensions of this increase is reflected in United States-Romanian trade statistics. Between 1964 and 1972, the volume of trade between the two countries jumped from \$6,428,000 to \$100,900,000. For annual bilateral trade statistics between the two countries since 1920, see U.S. DEPT OF COMMERCE, OVERSEAS BUS. REP. 71-057, at 18, table 20 (Dec. 1971) [hereinafter cited as OBR]; OBR 73-36, at 21, table 5 (Aug. 1973).

9. For a brief discussion of American export legislation as it applies to Yugoslavia, Romania, and Hungary, see notes 79-86 *infra* and accompanying text. For more extensive discussions of American export legislation as it applies to all of Eastern Europe, see Hoya, *The Changing U.S. Regulation of East-West Trade*, 12 COLUM. J. TRANSNAT'L L. 1 (1973); McQuade, *U.S. Trade with Eastern Europe: Its Prospects and Parameters*, 3 LAW & POL. INT'L BUS. 42 (1971).

10. See Burgess, *Doing Business in Eastern Europe: A Businessman's Look at Romania*, 27 BUS. LAW. 491, 505-06 (1972). See also note 14 *infra* and accompanying text.

11. In this they were spurred by the specter of those markets becoming dominated by Western European countries, whose economies are generally more complementary to those of Eastern Europe than is that of the United States and who, for geographical and historical reasons, are in a better position to carry on extensive commercial transactions with Eastern Europe. See S. PISAR, COEXISTENCE AND COMMERCE 75-78 (1970); Burgess, *supra* note 10, at 494-95; Hoya, *supra* note 9, at 30. See also Pisar, *Coexistence and Commerce with Russia and China: Ground Rules for East-West Trade*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS WITH SINO-SOVIET NATIONS 1, 3 (J. Haight ed. 1973) [hereinafter cited as CURRENT LEGAL ASPECTS]; *American Direct Investment*, *supra* note 1, at 884.

12. See Hoya, *supra* note 9, at 3, 9-10. See also Litvak & Maule, *The Issues of Direct Foreign Investments*, in FOREIGN INVESTMENT: THE EXPERIENCE OF HOST COUNTRIES 3, 13, 19 (I. Litvak & C. Maule eds. 1970). But see *American Direct Investment*, *supra* note 1, at 880 n.14 wherein some restrictions on an American company's ability to trade through its overseas subsidiaries are discussed.

For a discussion of other benefits to carrying on trade through overseas subsidiaries, see KRETSCHMAR & FOOR, *supra* note 1, at 57-59.

13. For a discussion of these and other forms of commercial agreements, see sources collected at note 1 *supra*.

types of operations improved upon trade insofar as American firms could take their compensation in goods produced under the contract<sup>14</sup> and the cost of goods thus taken reflected production benefits of Eastern Europe's cheap labor. But these arrangements did not utilize America's superior managerial expertise and thereby failed to reap the fullest potential from Eastern Europe's attractive productive resources.

While American companies tried to develop commercial schemes to further exploit Eastern European markets, Eastern European countries were also aware of the benefits that would accrue to expanded East-West commercial contacts and were eager to entertain American advances.<sup>15</sup> It became clear in the late 1950's that the Soviet Union would not be able to meet the increasing demands of its COMECON partners for capital goods and technology.<sup>16</sup> Nor could the Soviet Union provide the managerial or marketing expertise needed by Eastern European nations to achieve the development goals they had set for themselves. As a result, these countries launched economic reforms directed at making their economies more attractive to Western businesses interested in the Eastern European markets.<sup>17</sup> Foremost among these reforms was the movement to decentralize the central planning machinery characteristic of the Eastern European economic systems, thereby making the economies more responsive to market forces and more conducive to interaction with Western economies.<sup>18</sup> Also important, though less successful, were the efforts of these countries to increase hard currency reserves and improve the status of their own inconvertible currencies.<sup>19</sup>

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14. American firms could thereby avoid parallel trading arrangements and, more importantly, payments in inconvertible currency which would then have to be switch-traded at substantial discounts. For explanations of these practices and the problems they entail, see Burgess, *supra* note 10, at 525-26; McQuade, *supra* note 9, at 58; and *American Direct Investment*, *supra* note 1, at 886 n.38.

15. See *American Direct Investment*, *supra* note 1, at 887 nn.40 & 41.

16. Webster & Stowell, *supra* note 6, at v-vi. See Burgess, *supra* note 10, at 493. COMECON, the Council for Mutual Economic Assistance (also abbreviated CMEA), was founded in 1949 to promote trade and coordinate national economic plans among the countries of Eastern Europe and the Soviet Union. *American Direct Investment*, *supra* note 1, at 884 n.32, 885. See also OBR 71-057, *supra* note 8, at 14.

17. McQuade, *supra* note 9, at 57.

18. Typical of the region's efforts in this direction are the numerous reforms undertaken by Romania in the last decade in an attempt to improve the functioning of its economy in general and, specifically, its foreign trade sector. For a comprehensive discussion of these reforms, see Burgess, *Romania Looks West: An Analysis of Legislative Change in the Foreign Trade Sector During the Sixties*, 2 CAL. W. INT'L L.J. 16 (1971), and Burgess, *supra* note 10, at 515-17. For a discussion of similar developments in Hungary, see Dietz, *Foreign Trade Arbitration in Hungary*, 5 N.Y.U.J. INT'L L. & POL. 251, 255-56 (1972).

19. It must be remembered, of course, that all economic reforms in Eastern Europe

Yugoslavia showed the way to a more fruitful East-West commercial relationship in 1967. Prior to that time, all Eastern European countries had closely adhered to the socialist doctrine vesting ownership of the means of production in the state. In July 1967, however, Yugoslavia passed a law allowing limited foreign equity participation in joint business ventures.<sup>20</sup> By providing for joint "ownership," Yugoslavia had found a way for both East and West to obtain desired ends from increased commercial contacts. An Eastern partner could benefit from Western capital goods, technology, and managerial and marketing expertise;<sup>21</sup> a Western partner could take advantage of the host country's resources, including an inexpensive, skilled, and stable labor force, and also have access to the country's internal lines of product distribution.<sup>22</sup> Because of the success enjoyed by Yugoslavia since its breakthrough in 1967,<sup>23</sup> Yugoslav law has now been substantially imitated by Romania<sup>24</sup> and Hungary.<sup>25</sup>

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have been directed at acquiring hard currency reserves, but the one must logically precede the other. Thus, to the extent that a country successfully decentralizes its economy making it more efficient and more attractive to Western investment, especially in the form of technology, it will begin to develop the means to accumulate hard currency reserves. The actual accumulation of hard currency, however, must await the production of the type of goods that can attract it, which in turn depends on the ingestion of Western technology. See Burgess, *supra* note 18, at 18-19. See also KRETSCHMAR & FOOR, *supra* note 1, at 63.

20. The original Yugoslav regulations permitting foreign equity participation appeared in two laws. The first, Law of July 10-11, 1967, Concerning Amending and Supplementing the Law on Funds of the Business Organizations, [1967] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 31, [hereinafter cited as 1967 Yugoslav Investment Law], cited in Peselj, *Yugoslav Laws of Foreign Investment*, 2 INT'L LAW. 499, 502 n.10 (1968), contained the basic provisions regarding foreign investments. An unofficial translation appears in AM. REV. EAST-WEST TRADE, Jan. 1968, at 43-48. The second law, Law of July 10-11, 1967, Concerning the Profit Tax Payable by the Foreign Persons Who Invest Funds in a Domestic Business Organization for Joint Business Operations, [1967] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 31, [hereinafter cited as 1967 Yugoslav Tax Law], cited in Peselj, *supra*, at 502 n.12, regulated the payment of taxes on foreign investors' profits. An unofficial translation of the law appears in AM. REV. EAST-WEST TRADE, Feb. 1968, at 54-57. The investment law has now been superseded by Law of Apr. 12, 1973, Concerning Investment of Resources by Foreign Persons in Domestic Organizations of Associated Work, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45 [hereinafter cited as 1973 Yugoslav Investment Law].

21. The Eastern partner might also get access to Western markets through the functioning of a joint venture. KRETSCHMAR & FOOR, *supra* note 1, at 15-16.

22. The Western partner might also get the benefit of serving even more remote markets and be able to obtain Eastern European technology in those fields in which it has outstripped the West. KRETSCHMAR & FOOR, *supra* note 1, at 16-17; Benoit, *supra* note 1, at 42. See also Webster & Stowell, *supra* note 6, at viii-ix.

23. Through October 1970 the total capitalization of joint ventures registered in Yugoslavia was over \$239 million. Glickman & Sukijasovic, *Yugoslav Worker Management and Its Effect on Foreign Investment*, 12 HARV. INT'L L.J. 260, 309-11 (1971). In the ensuing two years, foreign investment alone added roughly another \$50 million. Note, *Joint Ventures in Yugoslavia: 1971 Amendments to Foreign Investment Laws*, 6 N.Y.U.J. INT'L L. & POL. 271, 295 (1973) [hereinafter cited as *Joint Ventures in Yugoslavia*].

## II

## THE EASTERN EUROPEAN FOREIGN INVESTMENT LAWS

## A. A PRELIMINARY COMMENT

The main obstacle to joint ventures in Eastern Europe—the socialist doctrine regarding state ownership of the means of production—has been circumvented by the foreign investment laws of Yugoslavia, Romania, and Hungary, which confer on foreign investors something approaching ownership.<sup>26</sup> These laws have also helped minimize a more pragmatic obstacle characteristic of commercial transactions with Eastern Europe. In the absence of explicit regulations, Western negotiators have had to “hammer out” all details of contracts with their skillful Eastern European counterparts, an arduous and time-consuming task not always producing favorable results.<sup>27</sup> The investment laws of these three countries have, by virtue of their specificity, removed some of the most difficult issues from the negotiating arena.<sup>28</sup>

24. Romania first declared that it would allow limited foreign equity participation in joint companies in Law No. 1 of March 17, 1971, Concerning the Foreign Trade, Economic, and Technico-Scientific Cooperative Activities of the Socialist Republic of Romania, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971) [hereinafter cited as 1971 Romanian Investment Law], cited in Burgess, *supra* note 10, at 517 n.79, translated in 11 INT'L LEGAL MAT'LS 161 (1972) and in OBR 71-057, *supra* note 8, at app. II. The general terms of the law were implemented more specifically in two decrees of November 2, 1972; Decree No. 424, On the Constitution, Organization and Functioning of Mixed Companies [hereinafter cited as 1972 Romanian Investment Decree], and Decree No. 425, On Taxation of Profits of Mixed Companies [hereinafter cited as 1972 Romanian Tax Decree]; unofficial translations of these decrees appear in OFFICIAL BULL. No. 121, Nov. 4, 1972 (Bucharest) (available from the U.S. Dep't of Commerce, Bureau of Int'l Commerce) and in 12 INT'L LEGAL MAT'LS 651 (1973).

25. The Hungarian law, Decree of the Minister of Finance, No.: 28/1972 (X.3.) PM, About the Economic Companies with Foreign Participation, October 3, 1972 [hereinafter cited as 1972 Hungarian Investment Decree], appears in unofficial translation in the HUNGARIAN GAZETTE No. 76, Oct. 3, 1972, and in 12 INT'L LEGAL MAT'LS 989 (1973). The decree implements article 31 of Law Decree 19 of the Presidential Council on Economic Partnerships, August 7, 1970, which by inference had provided for the foreign equity participation necessary to a joint venture. KRETSCHMAR & FOOR, *supra* note 1, at 143; Dagon, *Cooperation Agreements and Joint Ventures with Socialist Business Associations: The Hungarian System*, 21 AM. J. COMP. L. 752, 753 (1973).

26. Although these laws do not provide for “ownership” as that term is usually understood, they nevertheless allow a foreign investor to hold the “bundle of rights” comprising the general incidents of ownership, principally the right to assume some control over an investment and the right to take profits from it. See Benoit, *supra* note 1, at 41.

27. For an assessment of what might be involved in negotiating a contract in Romania, see OBR 73-36, *supra* note 8, at 10-11. And for an account of the actual negotiating experience of an American firm in the Soviet Union—the latter approaching such negotiations with the same predispositions as do Eastern European countries generally—see Doolittle, *Business Briefs From Moscow Streets: The Practical Aspects of Trade with the Soviets*, in CURRENT LEGAL ASPECTS, *supra* note 11, at 27, 29-33. See also Burgess, *supra* note 10, at 521; Webster & Stowell, *supra* note 6, at ix.

28. For a comprehensive list of provisions generally found in Romanian contracts,

## B. ESSENTIAL LEGAL ISSUES OF AN INVESTMENT DECISION

Before making a firm decision to invest abroad, an American business will examine a variety of factors concerning the suitability of the potential host country in an effort to minimize the risks and maximize the profitability of the proposed investment.<sup>29</sup> Central to this investigation is an evaluation of the legal framework for investment in the host country. Among the legal issues which the potential investor will seek to clarify, the following are most important:<sup>30</sup> (1) what powers of control accrue to the American investor by virtue of its equity participation; (2) to what degree and in what form can profits be repatriated; (3) may capital be similarly repatriated; and (4) what taxes are applicable to business profits. If the answers to these questions do not appear in a host country's investment laws, an American investor will seek to determine whether they can be favorably resolved by contract. However, it is preferable that each of these essential issues be treated by a host country's investment law.<sup>31</sup> What follows is a comparison of how the Yugoslav, Romanian, and Hungarian foreign investment laws treat each of these issues.

## 1. Powers of Control

The foreign investment laws of all three countries establish the normal upper limit of a foreign investor's equity participation at forty-nine percent of a joint venture's total capitalization.<sup>32</sup> The Yugoslav and Hungarian laws additionally provide for greater foreign participation in

see OBR 73-36, *supra* note 8, at 11-12. For a more general discussion of some of the important issues that should not be overlooked during negotiations and some ground rules that should be followed during the negotiating process, see KRETSCHMAR & FOOR, *supra* note 1, at 68-69, 101-04; Burgess, *supra* note 10, at 521-23.

29. Included among such factors are the country's general political and economic stability; its industrial, communications, and transportation infrastructures; its natural resource endowment and labor conditions; and the size of its domestic market. Also of great importance is the country's record in meeting its obligations in international commercial transactions. And the potential investor will, if possible, look closely at the situation of other current foreign investors in the country. *American Direct Investment*, *supra* note 1, at 895.

30. A number of lesser factors which may be considered in making an investment decision are discussed briefly in Litvak & Maule, *supra* note 12, at 18-21.

31. See note 27 *supra* and accompanying text.

32. 1973 Yugoslav Investment Law, art. 4, para. 1, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20; 1972 Romanian Investment Decree, art. 4, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24; 1972 Hungarian Investment Decree, art. 4, HUNGARIAN GAZETTE No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25. See also 1971 Romanian Investment Law, art. 59, para. 1, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24.



exceptional circumstances,<sup>33</sup> though in a Yugoslav venture,<sup>34</sup> and presumably in a Hungarian one also, a foreign investor may never possess effective majority control despite a majority equity position.

There is some difference among the laws as to the ownership of foreign assets<sup>35</sup> contributed to a joint venture. Romanian law is clearest on the point, providing that a foreign investor does not continue to own invested assets in a private capacity.<sup>36</sup> It was formerly assumed that this principle also applied under Yugoslav law,<sup>37</sup> a reasonable assumption in light of the fundamental Yugoslav constitutional principle of social ownership of property. Nevertheless, the present Yugoslav investment law provides that a foreign investor may retain title to specific contributed assets,<sup>38</sup> and practice has sustained the law.<sup>39</sup> The Hungarian law does not address the question of ownership of contributed assets, and, as yet, practice has not indicated which of these positions will be adopted.

Though differences exist concerning the ability of a foreign investor to retain control over its contributed assets via continued ownership, the laws of all three nations sanction shared management control. The Hungarian law, again less specific than the Yugoslav and Romanian laws, appears to leave the relationship of venture partners to be worked out entirely in the partnership contract,<sup>40</sup> except insofar as the particular

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33. Article 4, paragraph 2 of the 1973 Yugoslav Investment Law provides that if the Federal Assembly determines that special circumstances in a particular economic activity are present, a foreign investor's equity share in a joint venture might exceed forty-nine percent. Article 4 of the 1972 Hungarian Investment Decree provides: "The foreign partners share of the partnership funds [basic capital, etc.] *generally* should not exceed 49 percent" (emphasis added).

34. 1973 Yugoslav Investment Law, art. 5, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20.

35. Article 14, paragraph 1 of the 1972 Romanian Investment Decree, *supra* note 24, enumerates several broad categories of forms which a foreign investor's capital contribution can take. In more specific terms these include money, machinery, raw materials, patents and licenses, and technological and managerial know-how. Neither of the other laws specifies any particular kind of property that must be invested. In the case of Yugoslav law, this silence has been interpreted to mean that any of the above forms could be invested. Peselj, *supra* note 20, at 505; Sukijasovic, *Legal Aspects of Foreign Investment in Yugoslavia*, 37 LAW & CONTEMP. PROB. 474, 478 (1972). Since these Eastern European countries most desire non-financial assets from the West (see note 21 *supra* and accompanying text), it may be assumed that Hungary will also accept other than financial contributions.

36. 1972 Romanian Investment Decree, art. 12, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24.

37. Peselj, *supra* note 20, at 506.

38. 1973 Yugoslav Investment Law, art. 10, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20.

39. Sukijasovic, *supra* note 35, at 480-81. For a discussion of the constitutional problem posed by article 10, see *Joint Ventures in Yugoslavia*, *supra* note 23, at 271, 284-87.

40. The law does not state this in so many words as do the Yugoslav and Romanian

form of business enterprise chosen is governed by other business statutes.<sup>41</sup> While the Yugoslav and Romanian laws also leave the precise scope of powers which may be asserted by a foreign investor to the terms of the investment contract and related documents,<sup>42</sup> they clarify the manner in which power is to be shared with the domestic enterprise's self-management organ.<sup>43</sup>

## 2. Repatriation of Profits

The Yugoslav and Romanian investment laws provide that the manner in which the partners share profits derived from a joint venture may be fixed by contract.<sup>44</sup> The Hungarian law is again less informative than Yugoslav and Romanian law, but in the absence of an express regulation, it may be assumed that, as with the laws of the other two nations, the mode of profit-sharing will be established in the partnership contract.

The laws of all three countries guarantee the foreign investor's right to repatriate its share of the profits generated by the joint enterprise<sup>45</sup>

laws, but the constant references to the broad powers arising under the partnership contract which appear throughout the law suggest this conclusion. See 1972 Hungarian Investment Decree, arts. 3(1), 5, 6(2), 8, 11(1)-(4), 12(5), HUNGARIAN GAZETTE No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25.

41. *Id.* art. 14(2).

42. 1973 Yugoslav Investment Law, art. 9, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20; 1972 Romanian Investment Decree, art. 11, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24. See also 1971 Romanian Investment Law, art. 58, para. 2, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24.

43. Under Yugoslav law, whatever management control a foreign investor retains over its contributed assets is manifested through its membership in a "joint business board" (or "joint operation board"). 1973 Yugoslav Investment Law, art. 9, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20. While the board's powers are broad, they are subject to being overridden in certain policy matters by the "workers' council" of the particular economic organization, the primary organ of worker self-management in Yugoslavia. For a discussion of this management arrangement, see Glickman & Sukijasovic, *supra* note 23, at 260, 267-71, 293-99. See also Peselj, *supra* note 20, at 508-11.

Under Romanian law a foreign investor also shares management committee responsibilities with representatives of the domestic enterprise's self-management organization, the "working peoples' general assembly." 1972 Romanian Investment Decree, art. 34, para. 2, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24. Additionally, article 33, paragraph 2, enables foreign personnel to undertake actual managing functions.

44. 1973 Yugoslav Investment Law, art. 7, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20; 1972 Romanian Investment Decree, art. 10, para. 2, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24. See also 1971 Romanian Investment Law, art. 58, para. 2, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24.

45. 1973 Yugoslav Investment Law, art. 18, para. 1, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20; 1972 Romanian Investment Decree, art. 7, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24; 1972 Hungarian Investment Decree, art. 11(1), HUNGARIAN GAZETTE

after payment of profit taxes.<sup>46</sup> However, in addition to profit taxes, each country imposes additional financial liabilities on a joint venture's profits before a foreign investor can transfer its share abroad. Yugoslav law, formerly the most restrictive concerning disposition of a foreigner's profits,<sup>47</sup> has been amended and now may be the most favorable regarding repatriation of profits. Beside profit taxes, only an annual payment of an unspecified amount to the "social community" diminishes a foreigner's profits.<sup>48</sup> In Romania a foreign investor must contribute additionally up to five percent of annual profits to a "reserve fund" until the fund reaches twenty-five percent of the foreigner's capital investment.<sup>49</sup> Under Hungarian law there are two special assessments which further limit a foreign investor's ability to repatriate its earnings. The first resembles the "reserve fund" provision of Romanian law. By its terms, the foreigner must contribute together with the Hungarian partner to a "risk fund" in a manner determined by the partnership contract until the fund constitutes one-tenth of the joint venture's value.<sup>50</sup> The other special assessment provides that an "employees' profit-sharing fund," not to exceed fifteen percent of the annual wages, may be established jointly by the partners from the enterprise's annual profits.<sup>51</sup>

A foreign investor is concerned not only with its ability to repatriate

No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25. See also 1971 Romanian Investment Law, art. 60, para. 2, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24.

46. 1973 Yugoslav Investment Law, art. 17, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20; 1972 Romanian Investment Decree, art. 7, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24; 1972 Hungarian Investment Decree, art. 7(1), HUNGARIAN GAZETTE No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25. See also 1971 Romanian Investment Law, art. 60, para. 2, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24.

47. Article 64O, paragraph 4 of the 1967 Yugoslav Investment Law, *supra* note 20, mandated that a foreigner reinvest at least twenty percent of its net profits in the Yugoslav economy, but the provision was repealed in 1971. See *Joint Ventures in Yugoslavia*, *supra* note 23, at 282-84. Article 18, paragraph 3, of the 1973 Yugoslav Investment Law, *supra* note 20, provides only that a foreigner may reinvest its earnings in the Yugoslav economy.

48. The 1973 Yugoslav Investment Law, *supra* note 20, contains an oblique reference to the payment to the "social community" in article 20, paragraph 2. For a breakdown of this payment for the "needs of society," see Glickman & Sukijasovic, *supra* note 23, at 262 n.18.

49. 1972 Romanian Investment Decree, art. 26, para. 1, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24; 1972 Romanian Tax Decree, art. 2, para. 3, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24.

50. 1972 Hungarian Investment Decree, art. 5, HUNGARIAN GAZETTE No. 76 (unofficial transl.), *supra* note 25.

51. *Id.* art. 6(1). Despite its optional appearance, this provision is likely to be routinely written into investment contracts since the Hungarian partner will want domestic laborers to share in a joint venture's prosperity.

profits, but also with the form in which they may be repatriated. Romanian law appears to enable a foreign investor to establish by contract that all cash profits be transferable in convertible currencies.<sup>52</sup> This benefit is stated more clearly in the Hungarian law, but is subject to the further stipulation that a foreign investor's profits may be repatriated only to the degree that they are deposited in the Hungarian National Bank.<sup>53</sup> The Yugoslav law provides no guarantees that accrued profits may be taken in freely convertible currencies. The degree to which profits may be so transferred depends entirely on the degree to which a joint venture's earnings are in hard currencies.<sup>54</sup>

### 3. Repatriation of Capital

The foreign investment laws of all three countries permit the repatriation of a foreign investor's capital contribution, though on somewhat differing terms. Romanian law guarantees repatriation upon the dissolution or liquidation of a joint enterprise,<sup>55</sup> leaving the circumstances under which dissolution or liquidation would occur to contract negotiations.<sup>56</sup> The laws of Yugoslavia and Hungary address the conditions for repatriation more specifically. Under Yugoslav law, a foreign investor may withdraw its residual capital investment when the contract has terminated by virtue of the achievement of its objectives<sup>57</sup> or when it has been cancelled either for failure to reach economic expectations or for breach.<sup>58</sup> The Hungarian law limits repatriation of a foreign partner's

52. See 1972 Romanian Investment Decree, arts. 23 & 24, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24. See also KRETSCHMAR & FOOR, *supra* note 1, at 117.

53. 1972 Hungarian Investment Decree, art. 11(1), HUNGARIAN GAZETTE No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25.

54. Peselj, *supra* note 20, at 512. See *Joint Ventures in Yugoslavia*, *supra* note 23, at 281. It should be remembered, however, that this problem can generally be avoided to the extent that the foreign investor has negotiated within the broad contractual powers granted it to take its profits in the form of the joint venture's production. See note 14 *supra* and accompanying text.

55. 1972 Romanian Investment Decree, art. 7, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24. See also 1971 Romanian Investment Law, art. 60, para. 2, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24.

56. 1972 Romanian Investment Decree, art. 36, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24. See also 1971 Romanian Investment Law, art. 58, para. 2, 33 OFFICIAL BULL. OF THE SOCIALIST REPUBLIC OF ROMANIA (1971), *supra* note 24. While it is not clear how much leverage a potential foreign investor has in this regard, it is at least clear that the investment laws envisage the possible repatriation of capital by foreign partners to joint ventures.

57. 1973 Yugoslav Investment Law, art. 19, para. 1, [1973] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 22, at 742-45, *supra* note 20.

58. *Id.* art. 11, para. 2. A further provision of the law also enables a foreign investor to transfer its rights and obligations under the investment contract to another foreign

investment to the amount of its capital contribution on deposit in the Hungarian National Bank should the foreigner unilaterally withdraw from the venture.<sup>59</sup> But if complete liquidation of the enterprise occurs,<sup>60</sup> the foreign partner may transfer its entire interest abroad after the venture's existing debts have been satisfied.<sup>61</sup> In either situation, the repatriation of capital is accomplished in the currency set by the contract. The Hungarian law also has a unique provision which guarantees the foreign investor compensation to the extent of its initial capital contribution for damages caused by state measures.<sup>62</sup>

#### 4. Taxes<sup>63</sup>

Under Yugoslav and Romanian law, the tax schemes to which a foreign investor's share of venture profits are subjected do not appear to vary to any substantial degree, though tax benefits offered by Yugoslavia are greater. The Hungarian scheme varies considerably from the other two and does not appear as favorable, though circumstances are conceivable in which it would be no less favorable.

The basic Yugoslav tax rate of thirty-five percent is levied uniformly on all net profits, no matter how large.<sup>64</sup> However, to encourage reinvestment in the Yugoslav economy, a foreign investor is offered substantial incremental tax benefits, reducing the tax rate up to fifty percent should the foreigner reinvest one-quarter or more of net earnings.<sup>65</sup> Romanian

or domestic business organization, thereby terminating the investment relationship. *Id.* art. 15. *See also id.* art. 16.

59. 1972 Hungarian Investment Decree, art. 11(4), HUNGARIAN GAZETTE No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25.

60. A complete liquidation may occur either as agreed upon in the partnership contract, *id.* art. 12(5), or upon determination by the Hungarian Minister of Finance that a venture is insolvent. *Id.* arts. 12(2)-(3).

61. *Id.* art. 13.

62. *Id.* art. 11(2).

63. This section will discuss only business taxes. Personal income taxes on foreign employees are not treated by the investment laws of the three countries.

64. 1967 Yugoslav Tax Law, art. 4, [1967] FED. OFFICIAL GAZETTE OF THE SOCIALIST FED. REP. OF YUGOSLAVIA No. 31, *supra* note 20.

65. *Id.* art. 5, paras. 1-3:

If a foreign person uses at least 25 percent of the profit earned in a year for increasing his share in the funds of the joint business operations, or invests it in another domestic business organization . . . or deposits it with a bank in Yugoslavia, that part of the assessed tax arising from that part of the profit shall be reduced by 15 percent.

If a foreign person uses over 25 percent to 50 percent of the earned profit of the purposes stated in Paragraph 1, of this Article, the assessed tax arising from 25 percent of the profit shall be reduced by 15 percent, and

law similarly assesses a flat rate of thirty percent<sup>66</sup> against profits less the annual contribution to the "reserve fund."<sup>67</sup> As with Yugoslav law, this basic rate will be adjusted according to what a foreign investor does with its profits. The tax is reduced by twenty percent on any portion reinvested in Romania for a minimum period of five years.<sup>68</sup> Furthermore, special tax benefits are realized in the first three profitable years of a venture's operation.<sup>69</sup> The Hungarian law provides a two-tiered tax schedule,<sup>70</sup> levied on a joint venture's annual profits less contributions to the "risk" and "profit-sharing" funds.<sup>71</sup> By its terms, if annual profits do not exceed twenty percent of total fixed value, they are taxed at a uniform rate of forty percent; but if profits surpass twenty percent, the rate jumps to sixty percent on the excess amount. A foreign partner may realize some compensating tax benefits by reinvesting profits in the joint venture,<sup>72</sup> as with the laws of the other two countries. But the Hungarian law does not state the extent of such benefits, which presumably falls within the discretion of the Minister of Finance. Although no further tax liabilities exist in Yugoslavia, both Hungary<sup>73</sup> and Romania<sup>74</sup> require contributions from the joint enterprise for social insurance. Additionally, net earnings repatriated from Romania are subject to a tax surcharge of ten percent.<sup>75</sup>

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that tax arising from that part of the profit above 25 percent shall be reduced by 30 percent.

If a foreign person uses over 50 percent of the earned profit for the purposes stated in Paragraph 1 . . . besides the tax facilities referred to in paragraph 2, of this article, the assessed tax on that part of the profit above 50 percent shall be reduced by 50 percent.

Besides receiving the benefits of the national law on tax remission, a foreign investor may realize additional tax benefits from Yugoslavia's underdeveloped republics and autonomous provinces which are authorized to apply their own tax reduction regulations to foreign investment in their territories. Šukijasovic, *supra* note 35, at 481-82.

66. 1972 Romanian Tax Decree, art. 1, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24.

67. *Id.* art. 2, para. 2.

68. *Id.* art. 4, para. 1.

69. *Id.* art. 3.

70. 1972 Hungarian Investment Decree, art. 7(3), HUNGARIAN GAZETTE No. 76, Oct. 3, 1972 (unofficial transl.), *supra* note 25.

71. *Id.* art. 7(2).

72. *Id.* art. 7(4).

73. The Hungarian law also requires that a contribution be made to retirement pension funds. *Id.* art. 9(2).

74. 1972 Romanian Investment Decree, art. 35, para. 1, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24.

75. 1972 Romanian Tax Decree, art. 13, para. 1, OFFICIAL BULL. No. 121, Nov. 4, 1972 (unofficial transl.), *supra* note 24.

## III

A FURTHER LEGAL CONSIDERATION:  
AMERICAN LEGISLATION AFFECTING INVESTMENT ABROAD

Because United States legislation regulating American business transactions abroad continues to treat commercial relations with Yugoslavia more favorably than those with Romania or Hungary,<sup>76</sup> American business firms seeking joint ventures in Eastern Europe may look to Yugoslavia first, though, as the foregoing comparison reveals, its foreign investment law has no compelling advantages over those of Romania and Hungary. This is so despite the concern which the United States has shown in the recent past for developing closer ties with Romania and, to a lesser degree, Hungary.<sup>77</sup>

Since the recent termination of the Foreign Direct Investment (FDI) Regulations,<sup>78</sup> the principal United States legislation treating commercial

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76. This situation is no doubt superficially attributable to Yugoslavia's long-standing independence in Eastern Europe, but it also reflects a more deeply-seated and disturbing Congressional inability to bury its Cold War anxieties and keep pace with the changing political complexion of Eastern Europe. For a brief history of Executive efforts to liberalize commercial relations with all of Eastern Europe, see S. PISAR, *supra* note 11, at 79-93. See also Burgess, *supra* note 10, at 495-96.

77. One measure of the enthusiasm the United States has shown for developing closer ties with Romania is the number of high level visits to Romania made by U.S. officials. OBR 73-36, *supra* note 8, at 2. See also Burgess, *supra* note 10, at 497, 510. On improving United States-Hungarian relations, see the N.Y. Times, May 20, 1973, at 13, col. 1.

78. Because of considerable improvement in the United States' balance-of-payments position in the past year [see CCH BALANCE-OF-PAYMENTS REP. ¶¶ 9150, 9159, 9165, 9175 (1973)], the FDI Regulations, 15 C.F.R. §§ 1000.101-1407 (1973), were terminated January 29, 1974 [see N.Y. Times, Jan. 30, 1974, at 1, col. 5], well in advance of the Nixon Administration's intended December 31, 1974 deadline for phasing out the investment controls. Statement on Devaluation of the Dollar by Treasury Secretary Shultz, N.Y. Times, Feb. 13, 1973, at 56, col. 5.

While they were in operation, the FDI Regulations were foremost among United States commercial laws treating Yugoslavia more favorably than Romania or Hungary. Under the regulations' tripartite scheme, Yugoslavia was grouped with those less developed countries to which American investment was still encouraged. 15 C.F.R. § 1000.319(a) (1973). Romania and Hungary, however, were included in the most sharply restricted investment category. 15 C.F.R. § 1000.319(c) (1973). The adverse effect of this classification on the latter countries was two-fold. Besides the fact that an American business' annual direct investment "allowable" within their category was substantially less than it was within Yugoslavia's category [15 C.F.R. §§ 1000.502-507 (1973)], Romania and Hungary suffered the additional handicap of having to compete for American investment with the developed countries of Western Europe, all of which, with the sole exception of the United Kingdom [15 C.F.R. § 1000.319(b) (1973)], fell into their classification. Though the effects of the FDI Regulations could be avoided by several routes, notably if the value of the assets invested abroad was less than \$50,000 or the investment itself of less than twelve months duration [15 C.F.R. § 1000.304(d) (1973)], none offered a realistic alternative to most American businesses. The result was that while the regulations were in operation, they tended to discourage American investment in Romania or Hungary.

For an excellent discussion of the FDI Regulations as they formerly applied to

intercourse with Eastern Europe are the regulations<sup>79</sup> authorized by the Export Administration Act of 1969, as amended by the Equal Export Opportunity Act of 1972.<sup>80</sup> These regulations restrict the type of capital goods and technology which may be exported to or eventually reexported from a joint venture host country,<sup>81</sup> and like the former FDI Regulations, they continue to accord Yugoslavia a favored treatment.

Under the export regulations, Yugoslavia is classified with the developed countries of the West and is afforded the same liberal export treatment they enjoy.<sup>82</sup> Romania receives treatment which is less restrictive than Hungary and the remaining countries of Eastern Europe,<sup>83</sup> but which is still not as liberal as that received by Yugoslavia.<sup>84</sup> For practical purposes, this difference in treatment may not be especially important. The capital goods and technology which an American business would consider contributing as its share of a joint venture in Yugoslavia, Romania, or Hungary would, in all likelihood, not be of a nature that would be denied export licenses to any of the countries except in the rarest of circumstances.<sup>85</sup>

joint ventures in Eastern Europe, see Hoya, *The Office of Foreign Direct Investments and East-West Joint Ventures*, AM. REV. EAST-WEST TRADE, Aug./Sept. 1971, at 16. For a more extensive analysis of the regulations as they operated generally, see McDermott, *The Foreign Direct Investment Controls*, 11 HARV. INT'L L.J. 490 (1970).

79. The basic export controls are implemented by the Export Control Regulations, 15 C.F.R. §§ 368-99 (1973). For additional export controls pertaining to a variety of special goods, see Hoya, *supra* note 9, at 6 n.30.

80. 50 U.S.C.A. App. §§ 2401-13 (Supp. 1973).

81. The regulations are authorized to control exports pursuant to three legislative objectives: (1) to protect the domestic economy against supply shortages and the inflationary impact of excessive foreign demand; (2) to further American foreign policy and fulfill America's international responsibilities; and (3) to protect national security. 15 C.F.R. § 370.1(a) (1973). The national security purpose has, until recently, been the principal concern in the issuance of export licenses, especially for goods to be exported to communist countries. Hoya, *supra* note 9, at 7. However, political turmoil over shortages of an ever-growing number of commodities suggests that the short-supply rationale will be increasingly relied upon.

82. 15 C.F.R. § 385.4(c) (1973). Exports to this group of nations are generally restricted only to the degree necessary to prevent their being reexported or diverted to unauthorized destinations contrary to the United States national interest. 15 C.F.R. § 385.4(b) (1973).

83. Burgess, *supra* note 10, at 509-10. See 15 C.F.R. § 370 Supp. No. 1 (1973).

84. Compare 15 C.F.R. § 385.2 (1973) with 15 C.F.R. § 385.4(b) (1973).

85. Although many types of goods and technical data may now be exported to Romania and, to a lesser degree, Hungary without formal government approval under a "General License," goods or data that may have strategic value to these communist countries can be exported only under a "Validated License," if in fact they can be exported to them at all. Hoya, *supra* note 9, at 7-8. In determining whether such items can be exported to these countries, the government considers *inter alia*: the kinds and quantities of commodities or technologies to be shipped, their military and civilian uses, the availability abroad of the same or comparable items, the country of destination, the ultimate end-user in the country of destination, and the intended end-use.

15 C.F.R. § 385.2 (1973).



But the potential that Yugoslavia could receive more favorable treatment exists and is reflected daily in the fact that applications to export goods or technology to Yugoslavia under Validated Licenses are processed with less delay.<sup>86</sup>

American businesses planning to invest in Eastern Europe must also consider legislation pertaining to the Export-Import Bank<sup>87</sup> and the Overseas Private Investors Corporation (OPIC),<sup>88</sup> the benefits of which now apply equally to Yugoslavia and Romania. The former legislation is important only if an American firm seeks government financing for its investment;<sup>89</sup> the latter, however, provides insurance and other investment guarantees important to all American overseas investors,<sup>90</sup> and the inability to purchase such protection will no doubt discourage businesses which might otherwise consider investment in Hungary.

#### CONCLUSION

From a purely legal point of view, there are but slight grounds upon which to distinguish among the investment laws of Yugoslavia, Romania, and Hungary in an attempt to determine which is most favorable. Each of the laws presents an investor with certain advantages that do not appear—or at least do not appear as clearly—under the other two laws. Each also contains certain weaknesses not appearing in the others. In the abstract, it is impossible to weigh these relative benefits and burdens with any precision. But, on balance, if any one of the laws does seem to be more favorable to foreign investors, it is the Yugoslav law. This is so, however, as much for the fact that the Yugoslav law has had the benefit of substantial experience in its application as for any compelling advantages that inhere in it.

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86. See 15 C.F.R. §§ 370.11(a)(4) & (b)(2) (1973). See also Burgess, *supra* note 10, at 500-05 for a discussion of the practical problems involved in exporting goods to Romania.

87. 12 U.S.C. § 635 (1970). Export-Import Bank financing of exports to Yugoslavia and Romania was authorized by Presidential determination in 1968 and 1971 respectively. Hoya, *supra* note 9, at 12 & nn.51 & 52.

88. 22 U.S.C. §§ 2191-2200a (1970). OPIC guarantees were extended to investments in Yugoslavia and Romania by Presidential action in 1972. Hoya, *supra* note 9, at 18.

89. Although the availability of Export-Import Bank credits is important in normal export trade with Eastern Europe since most transactions are based upon the extension of credit to the foreign buyer, an American investor in a joint venture will generally not be exporting goods for sale to the foreign enterprise, so that financing of this nature will usually be unnecessary.

90. OPIC provides American investors abroad with insurance against expropriation, currency inconvertibility, and war damage. It also guarantees private loans made to these investors by American lending institutions. Hoya, *supra* note 9, at 18.

Whatever the relative merits of the three investment laws, this much can be stated with certainty: the investment laws adopted by Yugoslavia, Romania, and Hungary hold great potential for American businesses and even greater potential for American foreign policy. Investors are now offered opportunities to enter into more involved commercial relationships and to enjoy more substantial production benefits and possibilities for market expansion than were ever before possible. If such involvement occurs and is mutually beneficial, other Eastern European countries will be encouraged to enact similar laws. The interaction that must inevitably attend such developments will contribute to improved relations between Eastern Europe and the United States at economic, social, and political levels alike.

Despite the potential existing in these investment laws, however, the fact must not be overlooked that the older, less involved and less profitable forms of commercial endeavor still continue to be relied upon more than joint ventures.<sup>91</sup> This may be attributable to the relative infancy of all three laws and to the fact that American businesses have yet to acquire the confidence in Eastern European investment that will come with greater exposure. Nevertheless, the opportunities offered by the laws of Yugoslavia, Romania, and Hungary will not be fully realized until the United States adjusts its commercial legislation to meet current political realities in Eastern Europe. The termination of the foreign investment controls<sup>92</sup> is a first step in this direction, but it alone is not enough. Congress is now in the process of easing trade restrictions with the socialist states of Eastern Europe by offering them the benefit of most-favored-nation status with regard to United States trade concessions.<sup>93</sup> Congress should not stop there, but should press on and also take affirmative action to encourage American investment in Eastern Europe.

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91. See Webster & Stowell, *supra* note 6, at vii, x. See also Pisar, *supra* note 11, at 4.

92. See note 78 *supra*.

93. See the Trade Reform Act of 1973, H.R. 10710, 93d Cong., 1st Sess. (1973), at §§ 401-07, now pending before Congress.